

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Board/Commission		Kaua‘i Police Commission	Meeting Date	June 22, 2018
Location	Mo‘ikeha Building – Meeting Room 2A/B		Start of Meeting: 9:30 a.m.	End of Meeting: 11:48 a.m.
Present	<p>Vice Chair Mary K. Hertog; Commissioners: Leina’ala Jardin, Kevin Mince and Roy Morita.</p> <p>Also present: Board & Commissions Office Staff: Support Clerk Mercedes Omo; Administrator Nicholas R. Courson; Office of the County Attorney: County Attorney Mauna Kea Trask; Police Department: Deputy/Assistant Chief of Police Michael Contrades; Assistant Chief Robert Gausepohl; Lieutenant Kennison Nagahisa; 911 Dispatcher III Lavina Taovao and numerous KPD Officers.</p>			
Excused	Chair Gerald Bahouth and Commissioner Catherine Adams.			

SUBJECT	DISCUSSION	ACTION
Call To Order		Vice Chair Hertog called the meeting to order at 9:30 a.m. with four Commissioners present to conduct business.
Chair’s Comments/ Announcements	Vice Chair Hertog asked if there was anyone in the audience who wished to give testimony on any one of the items listed on the agenda. No testimony was received. Additionally, Vice Chair Hertog noted that although Ms. Adams was not present at today’s meeting, she, along with her fellow Commissioners, would like to express their condolences to Ms. Adams for the loss of her husband.	
Recognition for 911 Dispatcher III Supervisor Ms. Lavina K. Taovao	<p>Ms. Taovao is an 18-year veteran with the Kaua‘i Police Department as a 911 Dispatcher and has an extensive background in both the medical and supervisory field. She is often considered by her fellow co-workers as the go-to person because of her ability to make well-informed decisions whenever a situation presents itself. In addition, Ms. Taovao is known to have a calming voice whenever she speaks to the officers over the radio, as well as to the general public. She is considered by others to be an innovative thinker who is always trying to look for ways to improve the Department and she is a very good listener.</p> <p>Reading the commendation for Ms. Taovao was Lieutenant Kennison Nagahisa.</p> <p>Deputy Chief Contrades presented Ms. Taovao with a Certificate of Exemplary Services on behalf of the men and women in the Kaua‘i Police Department and the entire community for a job well done. Following the presentation, the Commissioners commended Ms. Taovao for her</p>	

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	outstanding work.	
Approval of Minutes	Regular Open Session Minutes of May 25, 2018.	Mr. Morita moved to approve the Meeting Minutes as circulated. Ms. Jardin seconded the motion. The motion carried 4:0.
Chief’s Monthly Reports for May/Pertinent Updates and Announcements	<ol style="list-style-type: none"> 1. Administrative and Technical Bureau Reports 2. 2017-2018 Fiscal Year Report as of May 31, 2018 3. Investigative Services Bureau 4. Call for Service and Incident <ul style="list-style-type: none"> • Recruitment/Hiring: Five new police services officers have been hired on June 1, 2018, and all five are undergoing a month-long training program and will be assigned to cellblock upon completion of their training. KPD is in the process of vetting an additional five new police services officer recruits and all five are meeting with the psychologist as of today. There was one transfer request from a Hawai‘i Island Police Officer. • Body-Worn Camera Labeling: The labeling for the new body-worn cameras are close to implementation. • Alarm Ordinance: The County’s alarm ordinance is in full swing; bills have been sent out. • On July 3, 2018, the Kaua‘i Police Department will be celebrating its 75-Year Anniversary since being recognized as a National Police Department. • The following calendar year goals from January to June 2018 have all been accomplished: 1) the expansion of the evidence storage room facility; 2) the in-service training for legal updates on use of force and mental health issues; 3) the construction of a new kennel for K-9, and KPD has obtained a new K-9 named King; 4) the lease for 15 new marked police vehicles is completed and an additional 15 more vehicles are being processed; and 6) the implementation of the Department’s Spillman Records System is completed and is up and running. 	

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	<p>Mr. Mince noted that the Fiscal Report shows the overtime expenditures were out of balance and assumed that it was due to the flooding event that occurred in April. He asked if he could get a breakdown of the overtime costs related to the flood event to which Deputy Chief Contrades responded yes. Mr. Mince then asked if the overtime costs are reimbursable by FEMA to which Deputy Chief Contrades responded yes, and shared all of the necessary paperwork have been Federal Emergency Management Agency (FEMA).</p> <p>Mr. Mince asked the Deputy if he could provide the actual overtime figures to which Deputy Chief Contrades responded sure. Lastly, Mr. Mince asked whether the Department was going to retain the Commission’s recommendation on recruitment as one of their goals. Vice Chair Hertog shared that a letter was sent to Chief Perry, asking if he would consider the Commission’s recommendation to look at the mainland applicants to see what type of national training they had already completed to get them back on the streets sooner rather than later.</p> <p>Deputy Chief Contrades reported that the 2018-2019 Fiscal Year goals have been established and he will be sending the list to the Commissioners. Mr. Mince asked Deputy Chief Contrades if he could attach a Metrix to the list of goals to which Deputy Chief Contrades responded yes. Lastly, Vice Chair Hertog commended the Vice Unit for doing such an outstanding job in confiscating 200 milligrams of crystal methamphetamine and 11 grams of heroin.</p>	
<p>KPC 2018-06 & KPC 2018-08</p>	<p><u>Discussion and possible decision-making on revising the Kaua‘i Police Commission Rules on Administrative Practice and Procedure to reflect the Intermediate Court of Appeals decision of June 2016 regarding the discipline of the chief of police, commission oversight and supervision of the chief. And discussion on formalizing the Police Commission agendas. (On-going)</u></p> <p>Vice Chair Hertog explained that Mr. Mince was tasked to come up with draft language to help clarify and enhance the Police Commission’s rules relative to the ICA’s ruling.</p>	

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	<p>Mr. Mince provided an PowerPoint Presentation reflecting proposed language for the new rule changes, highlighting the following topics: 1) The Intermediate Court of Appeals’ Ruling; 2) Commission’s overview and framework as reflected in the Kaua‘i County Charter, including its functions and responsibilities to provide oversight of the Chief of Police; 2) Proposed new agenda format; 3) Specific Powers, Duties and Responsibilities of the Police Commission; 4) Selection Process and Evaluation Process for the Chief of Police relating to the General Powers of Appointment; and 5) Proposed new Rule 10 Citizen Complaints, Internal Complaints, Lawsuits, and Investigations.</p> <p>Vice Chair Hertog asked County Attorney Trask if he had any comments on Mr. Mince’s presentation.</p> <p>Mr. Trask shared that he had an opportunity to meet with Mr. Mince to talk about what it means to have rules and that rules are there to provide guidance and establish obligations. Rules are not oriented for policy and should not include any philosophical type of statements involving the Intermediate Court of Appeals’ ruling, and although the language conveys the appropriate emotion of the decision, some of the statements are incorrect. For example, the proposed new language states that <i>“the court also ruled that inherent in the Commission’s power to appoint and dismiss the Chief is the power to discipline.”</i> That statement is untrue because the court ruled that inherent (not quoting it directly) is the ability to remove and the ability to suspend and discipline. He pointed out that rules should not stand to enforce a single court ruling because it can be overturned, but more so, the Commission should want rules to be lasting documents and not something they have to change every time a law changes or the court renders another opinion, so he would like to recommend that the Commission take that particular verbiage out of the rules.</p> <p>As for the proposed language under Overview, Mr. Trask recommended to eliminate that entire section because he does not believe that the Police Commission functions like a Board of Directors. Arguably, government should run like a business because there are fundamental differences between how a government runs and how a business runs.</p> <p>In reference to the paragraph that states, <i>the Commission does have the power and authority,</i></p>	

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	<p><i>and is expected, as the Chief's supervisor, to ensure that all actions by the Chief of Police are lawful, exhibits sound management practices and decision-making, he vehemently pointed out that the Commission should never guess the Chief, nor interfere with the administrative affairs of the Department, because it's strictly prohibited. In looking at the weight of its necessity versus the cost benefit analysis would disfavor its inclusion.</i></p> <p>In regard to the proposed new rule, <u>Rule 2-9 Agenda</u>, Mr. Trask explained that because the Police Commission is going to be here for decades, formatting the agenda in such a way would be ill-advised because only the Chair has the authority to set the agenda, and he or she should not be bound to such a rule because violating any rule would result in a penalty, which would not be conducive for any Chair to do the job.</p> <p>Vice Chair Hertog pointed out that the purpose of the PowerPoint Presentation was not for him to take things point-by-point on what he felt was appropriate or inappropriate. The presentation was simply to provide information to help further the discussion preferably on a one-on-one basis to help soften the language. She shared that by clarifying the language, anyone new coming on board will be able to get a clear picture of what a Police Commissioner's authority, responsibilities and duties are because when she first came on board, certain rules seemed pretty gray in terms of its intent. As for formatting the agenda, all they're trying to do is make things as clear as possible in terms of what issues are up for discussion. Vice Chair Hertog agreed with him that the language should be changed from <i>shall be utilized</i> to <i>could be utilized</i>.</p> <p>Mr. Trask stated although he agrees with the intent (in this current tempo sphere of time), the current Commission does not know what the future Commissions are subsequently going to have to deal with in terms of philosophical issues. The Police Department is unique because the employees (officers) carry guns and it's unlike any other department and does things that no other department does. Separate and apart, the State law treats them differently because their privacy rights are different, and under Hawai'i Revised Statutes 92 F 14 (a) (4) and (b), any information related to employment misconduct that result in an</p>	

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	<p>employee’s suspension or discharge are considered matters of significant privacy interest, like (this applies to all government employees in the State of Hawai‘i) the name of the employee, the nature of the employment-related misconduct, the agency’s summary of the allegations of the misconduct, findings of facts, conclusion of the law and the disciplinary action taken by the agency. All of which are confidential information and anyone who is not entitled to the information (which in this case is management) should not be privy to it, which in this case, even if the Police Commission is part of the Police Department, the Commissioners cannot interfere with the administrative affairs of the Department and, as such, should not be a party to the collective bargaining agreement between SHOPO and the County. This is not something the Police Commission would ever be entitled to.</p> <p>Vice Chair Hertog pointed out that the Police Commission was not asking to be privy to any of the information and has reiterated that on several occasions. All the Commission wants to do is to make sure that if problem(s) do arise, it’s dealt with properly.</p> <p>Relative to the proposed new rule, Rule 10-7 (b), Mr. Trask stated that the Commission does not have the authority to review internal investigative complaint packages (which may include personal and private information) and although the proposed new language (second paragraph - last page) states “<i>it does, however, under its authority as the Chief’s supervisor can <u>INQUIRE</u> into the circumstances surrounding the internal complaint and the actions of the Chief to ensure compliance with departmental or county policy and proper management action,</i>” the Commission is not privy to a person’s name.</p> <p>He added that these are factual and circumstantial issues and as a matter of policy, the Police Commission is a Citizens Advisory Committee, and it deals with citizen complaints and the hiring, firing and supervision of the Chief of Police. He pointed out that the Commission does not have authority over police officers and should not know what they’re doing in any circumstances under which they are subject to. The only problem with that is how the Commission can supervise the Chief appropriately if the Commission does not know what he or she is doing. That’s not a problem he, the Mayor, nor the Police</p>	

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	<p>Commission created; it was created by the Intermediate Court of Appeals and the Hawai‘i Supreme Court. And for the record, it’s going to be difficult for the Commission because the officers in the Kaua‘i Police Department have significant privacy interest when it comes to personnel matters.</p> <p>The Commission, however, can get a glimpse of the circumstances when an officer comes in to request for legal representation in a criminal or civil case. In those circumstances, the Commission would need to know all of the facts surrounding the issue in order to make the appropriate call. The same goes for the Chief’s performance review – the Commission will need to look into how the Chief is dealing with personnel issues in the Department, which is all relevant because all of the stuff needs to be thoroughly, completely and clearly stated because everyone has the obligation to maintain the bargaining rights.</p> <p>Lastly, Mr. Trask stated for the record that the proposed rule changes are not complete, nor has it been approved, and that the Police Commission should refrain from speaking with the union because the union should be speaking to the employer, not the Commission, because the Commission is not the employer for the men and women in the Kaua‘i Police Department.</p> <p>Vice Chair Hertog thanked Mr. Trask for his guidance and noted that in no way, shape, or form does the Commission want to violate anyone’s rights to privacy; all the Commission wants to know (relative to the Chief’s performance) is if he’s handling the internal matters in a fair and appropriate manner.</p> <p>Mr. Trask shared a quote from former Associate Justice of the United States Supreme Court Oliver Wendell Homes Jr., <i>“the life of the law has not been logic; it has been experience. The felt necessities of the time, the prevalent morale and political theories, institutions of public policy, a vowed or unconscious, even the prejudices with which the judges share to their fellow men have had a good deal of more to do, than the civism in determining the rules by which men should be governed.”</i> And lastly, Mr. Trask noted that as the</p>	

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	<p>Commission proceeds through it, things are not going to make sense because the law doesn’t make sense. He asked the Commissioners to bear with him as he is going to be polite as he can in trying to make sense of it all. In response, Vice Chair Hertog asked Mr. Trask to consider the Commissioners’ input, as well Deputy Chief Contrades’s input, moving forward.</p>	
<p>KPC 2018-11</p>	<p><u>Invitation to the 65th Annual Hawai‘i State Law Enforcement Officials Association (HSLEOA) Conference at the Ritz-Carlton in Kapalua Maui, on September 2-5, 2018. This year’s conference theme is “An Integrated Approach to Financial Investigations.”</u></p> <p>Vice Chair Hertog noted that the Commission has an opportunity to send three members of the Commission, so if anyone wanted to attend the conference, they should let Ms. Omo know as soon as possible.</p>	
<p>KPC 2018-012</p>	<p><u>Public announcements for Notarized Complaints Nos. KPC 2018-004 and KPC 2018-008 that were filed by the public.</u></p> <p>Vice Chair Hertog read the following announcements for the record.</p> <p><u>KPC 2018-004:</u> After a diligent inquiry by the Commission, in which the Commissioners reviewed all available materials, including the audio recording of the 911 call, the Kaua‘i Police Commission determined that the complaint had sufficient evidence to support the allegations. However, given the overwhelming circumstances the 911 Dispatcher was dealing with when the call came, the Commissioners have determined that the actions of the Dispatcher were an unintentional error. All parties have been properly notified of the Commission’s final disposition. This officially concluded the Commission’s review of Notarized Complaint KPC 2018-004.</p>	

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	<p><u>KPC 2018-008:</u> After a diligent inquiry by the Commission, in which the Commissioners reviewed all available materials, including footage obtained by the body-worn camera and listening to public testimony, the Kaua‘i Police Commission has determined that the complaint of cultural genocide had insufficient evidence to support the allegations. All parties have been properly notified of the Commission’s final disposition. This officially concluded the Commission’s review of Notarized Complaint KPC 2018-008.</p>	Mr. Morita moved to receive the public announcements for notarized complaint nos. KPC 2018-004 and KPC 2018-008. Mr. Mince seconded the motion. The motion carried 4:0.
Announcements	Vice Chair Hertog announced that the Commission’s next regular monthly meeting is scheduled for Friday, July 27, 2018 at 9:00 a.m. at the Mo’ikeha Building Meeting Room 2A/2B. Executive Session to follow.	
Executive Session KPC 2018-001	<p>Pursuant to Hawai‘i Revised Statutes §92-4, §92-5 (a) (2) and (4), the purpose of this Executive Session is for the Commission to review and discuss charges brought against an officer or employee of the County, where consideration of matters affecting privacy will be involved, provided that if the individual concerned requests an open meeting, an open meeting shall be held; and to consult with its attorney on issues pertaining to the Commission’s and the County’s powers, duties, privileges, immunities, and/or liabilities as they may relate to the following agenda items:</p> <p><u>ES KPC 2018-001</u> Monthly update by Office of Professional Standards Lieutenant James Miller on the status of the Department’s disposition on all formal notarized complaints that were filed with the Kaua‘i Police Department, including the complaints that were filed with the Police Commission and referred to the Office of the Chief for further review.</p>	At 10:29 a.m., Mr. Mince read the Executive Session items to bring the meeting into Executive Session.
ES KPC 2018-002	Monthly update by Chief Darryl Perry or his designated representative on any significant adverse incidents/events involving personnel in the Kaua‘i Police Department that could potentially impact the County, the Police Commission and the Kaua‘i Police Department.	

SUBJECT	DISCUSSION	ACTION
ES KPC 2018-012	Pursuant to Hawai'i Revised Statutes §92-4 and §92-5 (a) and (4), the purpose of this Executive Session is for the County Attorney to provide an update on the Department's handling of public complaints and an update on the Police Union's stance on an officer versus officer complaint and to consult with its attorney as to its powers, duties, privileges, immunities and/or liabilities as they relate to this agenda item. (Deferred on May 25, 2018)	
ES KPC 2018-016	New Formal Notarized Complaint No. KPC 2018-007 filed against an officer in the Kaua'i Police Department. The complainant alleges that she and members of her family were forced to leave their family-owned property without a signed warrant and was threatened by the officer that they would be arrested if they return to the property. (Deferred on May 25, 2018)	
ES KPC 2018-022	Pursuant to Hawai'i Revised Statutes §92-4 and §92-5 (a) and (2) and (4), the purpose of this Executive Session is for the Commission to discuss the appointment of an acting Police Chief, the different hiring options to find a new Police Chief and other related items, and to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities as they may relate to this agenda item.	
ES KPC 2018-023	Pursuant to Hawai'i Revised Statutes §92-4, §92-5 (a) (2) and (4), the purpose of this Executive Session is for the Commission to discuss the annual performance evaluation for Police Chief Darryl Perry where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held; and to consult with its attorney on issues pertaining to the Commission's and the County's powers, duties, privileges, immunities, and/or liabilities as they may relate to this agenda item.	
ES KPC 2018-024	Pursuant to Hawai'i Revised Statutes §92-4, §92-5 (a) (4), §92-9 (a) (1-4) and (b), the purpose of this Executive Session is for the Commission to approve the Executive Session meeting minutes of May 25, 2018, and to consult with its attorney on issues pertaining to the Commission's powers, duties, privileges, immunities, and/or liabilities as they may relate to this agenda item.	Vice Chair Hertog called for a motion to take the meeting into Executive Session. Mr. Mince moved to enter into Executive Session. Mr. Morita seconded the motion.

SUBJECT	DISCUSSION	ACTION
		The motion carried 4:0. At 10:25 a.m., the Commissioners entered into Executive Session.
Return to Open Session to Ratify the Actions Taken in Executive Session	At 11:48 a.m., the Commissioners reconvened in Open Session. Vice Chair Hertog called for a motion to ratify the actions taken in Executive Session.	<p>Mr. Mince moved to ratify the actions taken in Executive Session for the following items. Mr. Morita seconded the motion. The motion carried 4:0.</p> <p>ES KPC 2018-001: Briefing was provided by Lt. James Miller of the Office of Professional Standards.</p> <p>ES KPC 2018-002: No report.</p> <p>ES KPC 2018-0016: Motion carried 4:0 to exonerate the Officer from wrongdoing.</p> <p>ES KPC 2018-012: Briefing was provided by County Attorney Mauna Kea Trask.</p>

SUBJECT	DISCUSSION	ACTION
		<p>ES KPC 2018-022: <u>Motion No. 1</u> Motion carried 4:0 that as of June 22, 2018, the Commission formally accepts Chief Perry's letter of resignation effective July 31, 2018.</p> <p><u>Motion No. 2</u> Roll Call vote of 3:1 to appoint Deputy Chief Michael Contrades as the Acting Police Chief did not carry for a lack of the majority.</p> <p>ES KPC 2018-023: Motion carried 4:0 to not do Chief Perry's performance evaluation due to his retirement on July 31, 2018.</p> <p>ES KPC 2018-024: Motion carried 4:0 to approve the Executive Session Meeting Minutes of May 25, 2018.</p>
Adjournment	With no further business to conduct, Vice Chair Hertog called for a motion to adjourn the meeting.	<p>Mr. Morita moved to adjourn the meeting. Ms. Jardin seconded the motion. The motion carried 4:0.</p> <p>At 11:48 a.m., the meeting</p>

SUBJECT	DISCUSSION	ACTION
		adjourned.

Submitted by: _____
Mercedes Omo, Staff Support Clerk

Reviewed and Approved by: _____
Mary K. Hertog, Vice Chair

(x) Approved as circulated on July 27, 2018

() Approved as amended. See minutes of _____ meeting.